



Paper No. 9

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**APR 30 2004**

**OFFICE OF PETITIONS**

In re Application of  
Eldada  
Application No. 10/075,138  
Filed: February 14, 2002  
Attorney Docket No. 6156  
For: HITLESS ERRORLESS TRIMMABLE  
DYNAMIC OPTICAL ADD/DROP  
MULTIPLEXER DEVICES

DECISION  
ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed February 11, 2004, to revive the above-identified application. While the form used to file the petition is PTO/SB/61, the unavoidable revival form (37 CFR 1.137(a)), the fee transmittal authorizes the Office to charge \$1,330.00, which is the fee associated with an unintentional revival under 37 CFR 1.137(b). In addition, petitioner has submitted no showing of unavoidable delay. This leads the undersigned to believe that the use of the unavoidable form was an error and that petitioner intended to file a petition to revive under the unintentional standard of 37 CFR 1.137(b). Therefore, the petition will be treated under 37 CFR 1.137(b).

The petition under 37 CFR 1.137(b) is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

This application became abandoned for failure to timely reply to the Notice to File Missing Parts of Application Office action mailed April 1, 2002, which set a two month shortened statutory period for reply. No extensions of time having been obtained pursuant to 37 CFR 1.136(a), this application became abandoned on June 2, 2002. A Notice of Abandonment was mailed on January 14, 2004.

Petitioner has submitted an executed declaration, the surcharge for filing a late declaration, the petition fee, and a statement of the unintentional nature of the delay in responding to the April 1, 2002 Notice.

The statement of unintentional delay presented in the Fee Transmittal does not comply with the current rule. Effective December 1, 1997, 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

Pursuant to petitioner's authorization, deposit account no. 04-1928 will be charged a \$130.00 surcharge for the late filing of a declaration and a \$1,330.00 petition fee for filing a petition to revive under 37 CFR 1.137(b).

After the mailing of this decision, the application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6712.



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